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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,723	11/19/2003	Frank Craig	8404.026	6327

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EXAMINER

SIPOS, JOHN

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/716,723

Applicant(s)

CRAIG ET AL.

Examiner

John Sipos

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DOUBLE PATENTING REJECTION

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13-27 of Patent No. 6,311,461; claims 1,6-10,13,17-22,25 and 26 of Patent No. 6,006,500; claims 53-63 of Patent No. 5,706,628; claims 15-38 and 50-59 of Patent No. 5,605,029; claims 1-8 of Patent No. 5,699,652; claims 1-25, of US Patent No. 5,626,003; and claims 2-61 of Patent No. 5,586,425. The claims of these patents, as the claims of the instant application, set forth methods of placing a potted plant into two "covers" having interior spaces such as sleeves, wrappers, cartons or elastic bands. Although the conflicting claims are not identical, they are not patentably distinct from each other because the elimination of the more specific steps and their function of the process of the claims of the patents would have been obvious to one skilled in the art.

REJECTIONS OF CLAIMS BASED ON PRIOR ART

Claims 1-16 are rejected under 35 U.S.C. ' 103(a) as being unpatentable over the Japanese reference 5-42958 (cited in the IDS of 2/11/2003). This patent sets forth a pot cover and process of placing two covers on a flowerpot wherein the two covers 1 and 2 are preformed into their desired frustoconical shapes and placed within each other before placement of the flower pot into the double covers. The use of magazines for either collapsed containers or set-up containers is well known in the packaging art and therefore it would have been obvious to one skilled in the art to remove a sleeve from a magazine and to form stacks of pot covers in a magazine and remove a cover from the nested stack to be used in the packaging process. Regarding claims 2,3,12 and 13, the bonding of a cover to a flowerpot is well known in the art to prevent the cover from separating from the pot and would have been an obvious modification to one skilled in the art. Similarly, the use of different materials for the two covers (claims 4,5,14 and 15), automatic machinery to perform a manual operation (claims 7-9,11 and 16) and longer back panels for sleeves for holding the sleeves in magazines (claim 6) are well known in the packaging art and these would have been obvious modifications to one of ordinary skill in the art to the process of the Japanese reference.

Claims 1-16 are rejected under 35 U.S.C. ' 103(a) as being unpatentable over the 1989 Highland publication "Speed Cover – The Simple Solution for Those Peak Volume Periods" (cited in the IDS of 2/11/2003). This publication shows the preforming of flowerpot covers and the inserting of the pots into the covers. On page 3 there are two embodiments (top and bottom right) that show flowerpots in multiple layer pot covers. The publication states on page 3 "Nest red, white and blue covers for a patriotic theme" and this would imply the preforming of the

covers and placing one within the other. On the last page (page 6), the “Prestige Plus” covers are shown which comprise of preformed covers that “consist of a layer of poly foil and a liner of French Lace”, i.e. two preformed covers. The use of magazines for either collapsed containers or set-up containers is well known in the packaging art and therefore it would have been obvious to one skilled in the art to remove a sleeve from a magazine and to form stacks of pot covers in a magazine and remove a cover from the nested stack to be used in the packaging process. Note that the publication states on page 5 that the cover “Nests compactly saving storage space” indicating the forming of the covers into a stacks for subsequently dispensing and using.

Alternatively, it would have been obvious to one skilled in the art to preform each cover, place it in another cover and finally place the flower pot in the combined covers thereby eliminating the multiple handling and insertion steps of the flower pot.

Regarding claims 2,3,12 and 13, the bonding of a cover to a flowerpot is well known in the art to prevent the cover from separating from the pot and would have been an obvious modification to one skilled in the art. Similarly, the use of different materials for the two covers (claims 4,5,14 and 15) and automatic machinery to perform a manual operation (claims 7-9,11 and 16) are well known in the packaging art and these would have been obvious modifications to one of ordinary skill in the art to the process of the Japanese reference.

ADDITIONAL REFERENCES CITED

The following prior art is made of record but has not been relied upon in the rejection of claims. However, the prior art is considered pertinent to applicant's disclosure.


The patent to Rubel and Panasewicz show the use of sleeve magazines with the back panel being longer than the front panel so that the longer panel supports the sleeves in the magazines.

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **(703) 308-1882**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 872-9306**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at (703) 308-2187.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-1148.


John Sipos
Primary Examiner
Art Unit 3721